

## **PUBLIC HEARING AND REGULAR MEETING**

**City of Hampton Wetlands Board  
City Council Chambers, 8<sup>th</sup> floor, City Hall  
February 25, 2003**

**PRESENT:** Vice-Chairman William L. Wood and Board Members Gayle Cozzens and Thomas W. Morris.

### **ITEM I. CALL TO ORDER**

and

### **ITEM II. ROLL CALL.**

Vice-Chairman Wood called the meeting to order at 5:00 p.m., introducing each of the Board Members present, noting that Chairman Snider and Board Member Bellamy were absent. Staff persons in attendance were Brian Ballard, Greg Goetz, Ed Haughton, Sharon McSmith, and Terry O'Neill of the Hampton Planning Department, and Mark Eversole of the Virginia Marine Resources Commission (VMRC).

### **ITEM III. CONSIDERATION OF MINUTES.**

Vice-Chairman Wood stated since there is not a quorum of Board members at today's meeting that were present at the January 28, 2003 Board meeting, the minutes would be considered at the next meeting.

### **ITEM IV. JOINT APPLICATIONS (PUBLIC HEARING ITEMS).**

Vice-Chairman Wood stated that since there were no public hearing items and no new people in the audience, he would dispense with the explanation concerning purpose and jurisdiction of the Wetlands Board, the process of the meeting, and the appeals process.

### **ITEM V. STAFF REPORT.**

Request for Extension of Wetlands Permit #00-2034 for Old Point Comfort Marina at Fort Monroe.

Mr. Edward J. Haughton, City Planner, stated he had received a request to extend Fort Monroe's permit for another year to ensure adequate time to complete the project; most of the project is complete and sufficient funding to complete the work is anticipated during this fiscal year. Since there is no change in the scope of the project,

staff recommended approval of the request. A copy of the request is attached hereto and made a part hereof.

There being no discussion and no one from the public to speak, a motion was made by Board Member Morris and seconded by Board Member Cozzens to approve an extension to Wetlands Permit #00-2034 for Old Point Comfort Marina at Fort Monroe to expire March 27, 2004. A roll call vote on the motion resulted as follows:

AYES:	Cozzens, Morris, Wood
NAYS:	None
ABST:	None
ABSENT:	Bellamy, Snider

### Land Development Services

Mr. Terry P. O'Neill, Director of Planning, stated that the proposed Land Development Services (LDS) is a reorganization of City services to create better service delivery throughout the city. This is a consolidation of all permit activities into one central location being staffed by a multi-disciplinary group of staff. Someone needing a permit directly related to land development could go to the LDS counter and have all of his or her questions answered at one stop. The time schedule for implementation of this operation is some time this spring. Brian Ballard will be the Planning staff person who will operate most of the week from the LDS office. Implications to the Wetlands Board will be minimal; if the Board comes across someone seeking to get a land development permit, please direct them to this new office which will allow for better coordination among all City departments.

Mr. Greg Goetz, Chief Planner, stated this effort is about better communication in both directions between the City and developers. The traditional process has been that developers prepare detailed construction plans and, since we have a great deal of strategies and objectives on the public side, many times find ourselves needing to tweak the design to reach the City's objectives and the developer is then not happy. We realized we need all related departments to talk with the developers early in the process so we don't have half a dozen departments answering the same questions in their particular way, and perhaps not thinking to introduce other ideas or issues which other departments may bring to the table; consequently, the developer runs from department to department gathering essential information.

Mr. Goetz stated that collocating employees from each related department with the necessary data and records reduces the complexity from a developer's point of view to one office; that office will have expertise from all of the various areas a proposal may encounter. There will also be the data and files available if you simply need to research a project. We can schedule a meeting with all of the people who need to be involved in a project, with all of the data and records at their disposal before the engineer gets involved in the project, so we can talk to the developer about what they

are trying to accomplish, have an exchange of information about what the public needs to accomplish, and work toward developing a design that works for everyone. Then, when it's time for plan review, there won't be a lot of squabbling about how to comply with the codes. What we are trying to achieve is efficiency, effectiveness, and also friendliness in helping the developer realize a dream in the context of the law.

Mr. Goetz stated that there will be a real customer service aspect to this as well, and the way we're hopefully going to be successful there is to designate one individual as the point of contact from inception of the project to occupancy permit and closure of other regulatory matters. Brian Ballard will be the point of contact and will work with each project with an environmental flavor or focus; he will take the reigns on any project with shoreline impact in conjunction with other development, such as Hampton University, or a waterfront homeowner wanting to construct an addition.

Mr. Goetz stated he cannot foresee any change in how the Wetlands Board does its business. He will be the support staff, along with Ed Haughton and Caroline Butler, working with the group to develop an implementation plan for Land Development Services. The Board should expect to see a greater efficiency in services, as well as a greater closeness with the enforcement staff who will sit in on meetings so they have a better appreciation of how things are done.

Board Member Morris stated it sounds like a great idea.

Vice-Chairman Wood stated anything that makes the City more efficient is appreciated.

Mr. Brian Ballard, City Planner, stated the goal is to make the new process as seamless as possible. The changes should make us more efficient and should produce better products, which will be good for everyone involved.

#### Wetlands Violations Update – Hampton Roads Marina/Bluewater Yacht Sales

Mr. Ballard stated the Board and Hampton Roads Marina agreed in November that the violation would be taken care of by January 31, 2003 to remove the stone in violation of permit. Staff has been on a couple of site visits and there has been no change in the status of the violation. Staff received a letter via fax today, a copy of which is attached hereto and made a part hereof, that the applicant intends to remove the stone as soon as the weather will allow, and requesting an extension for compliance until April 15, 2003.

Vice-Chairman Wood stated when he voted on the January 31<sup>st</sup> deadline, he never thought about the bad and cold weather; his father always told him, "do not ask someone to do something you would not want to do yourself." He stated he does not condone what they have done in creating the violation, and then in not coming back and making mention of their difficulties to the Board before the deadline, but in all

fairness, he is unsure if April will be warm enough; the stone has to be picked out of the water by hand. The extension should be longer than requested and if it is then not in compliance the Board should come down as hard as possible.

In response to Board Member Morris's question about how much additional time would be recommended, Vice-Chairman Wood stated compliance should be obtained by the June Board meeting; water does not get warm very quickly.

Board Member Cozzens stated she believes the deadline should be sooner since the applicant did not respond in a timely manner--he should have come back to the Board and asked for an extension sooner, not the day of the deadline. She believes the Board is being too lenient.

In response to Mr. Ballard's comment that there has been some communication from the applicant relating to a hardship, Board Member Cozzens stated they were not supposed to do what they did in the first place and the Board is being too lenient.

In response to Board Member Morris's comment that you could get frostbite standing in the water today, and questioning staff's position on the request, Mr. Ballard stated he believes having some communication is important and the applicant did fax the letter showing hardship by the deadline—it is one step forward. Staff's position in the past has been voluntary compliance; however, staff is prepared to set a deadline of whenever the Board decides and to pursue compliance more aggressively because the Board has been more than generous with the applicant.

In response to Board Member Morris's question concerning whether the Board would need to proceed with legal action if the extension is not granted, Mr. Ballard stated the Code allows the Board to seek civil charges and to pursue action within Civil Court. The impact of this violation is minimal to the natural resource, although the level of compliance is questionable; the Board could recommend whatever it believes is reasonable. At the next Board meeting staff will discuss a proposed enforcement document that will hopefully establish a more thorough enforcement policy to which we all can agree. That way when cases like this come up we will all have the enforcement guidelines to follow.

In response to a question by Vice-Chairman Wood concerning advertisement, Mr. Haughton stated that the Board does not have to advertise its consideration of action in relation to the violation.

A motion was made by Board Member Morris and seconded by Board Member Cozzens to approve an extension for compliance of the violation in relation to Hampton Roads Marina/Bluewater Yacht Sales' wetlands permit to the April 22, 2003 Wetlands Board meeting. A roll call vote resulted as follows:

AYES: Cozzens, Morris, Wood  
 NAYS: None  
 ABST: None  
 ABSENT: Bellamy, Snider

#### Wetlands Violations Update – Hampton University

Mr. Ballard stated there are two issues relating to Hampton University's violation; the first being the fourth condition of their permit relating to planting 8,000 linear feet of Spartina, and the second issue being the buffer impact. Construction on the site took out the buffer and it has not been replaced, which is a site plan issue. The Wetlands Board issue is the planting plan. Staff sent a letter on February 6, 2003 indicating we need to set a timeline for a planting plan and including certain criteria that has to be a part of that plan. VIMS sent a letter to the Board, with a copy to the University, reflecting their perspective and more details about what the planting plan should include. We would like to have their plan as soon as possible, so when summer comes along they can plant and another planting season will not be lost. We asked Hampton University to bring their plan to staff by Feb. 24, which they did not; we called the University today requesting they attend tonight's meeting to indicate their willingness to bring forth a plan in a timely manner. He stated that staff talked to Lowell Middleton today, the Director of the Physical Plant, and it sounded like there was miscommunication between the University and their contractors, Dominion Sitework for the riprap and shoreline, and Armada/Hoffler for the dormitory, which might have had some impact on the buffer. There is a representative from Hampton University here tonight, and it sounds like they are making progress in getting an engineering firm to develop an as-built plan for the buffer requirement as well as a planting schedule.

Mr. Carlos Irizarry, Hampton University Physical Plant, Assistant to the President, stated that somewhere along the line they did lose communication between the University and the site contractor regarding the riprap and the plantings. They are trying to rectify the planting work with contractor Mark Mills; they have a copy of the proposal from MSAPC and are in the process of preparing a requisition for the purchase order to have the plan in place. Once they get the purchase order they can better indicate their intent and progress; June sounds like a reasonable time to have everything in place.

Vice-Chairman Wood stated the ideal planting time is between March and June, and we would expect a plan to come to the Board by the next meeting indicating your intentions so that we can handle it in a public meeting. He stated this has dragged on long enough, and there is no reason that Mark Mills shouldn't have known the problem from the beginning; he does not know who didn't do the communicating, but Mr. Mills has responded back concerning the additional problem.

In response to Vice-Chairman Wood's inquiry as to whether it will create a problem for the University to respond to the Board with a planting plan by the March 25, 2003 Board meeting, Mr. Irizarry stated this issue was passed to him at 4:30 this afternoon but he will make sure there is communication with Mr. Ballard as to their progress.

Mr. Ballard stated he wanted to make sure what the Board is requesting is clear, that the planing plan for spartina is to be given to the Board at the March 25<sup>th</sup> meeting, and the Chesapeake Bay issue is beyond the Board's purview.

In response to a question by Vice-Chairman Wood that since the buffer was part of the Wetlands Board application, that it be restored if negatively impacted, shouldn't the plan come back to the Board for approval, Mr. Ballard stated this is a tricky situation. The Board's authority is 1.5 times the tidal range for wetlands; there definitely needs to be a link between the Chesapeake Bay Act and the Chesapeake Bay Review Committee and the Wetlands Board, and that is why the Chairman of the Wetlands Board is on the Chesapeake Bay Review Committee.

Vice-Chairman Wood stated the buffer was changed from wetlands to buffer because of changes along a portion of that area that was considered wetlands. He is not saying the plan needs to be back here by the March 25th meeting, but it is part of the Wetlands Board's jurisdiction because in part it did affect wetlands.

Mr. Ballard stated the plan is to have as-builts drawn of the site to compare it to the original site plan to see where they deviate, and then determine where restoration is necessary; we could then report back to the Wetlands Board showing the progress made in conjunction with Codes Compliance. The University's Certificate of Occupancy is being held up and they are more motivated to pursue compliance; the March meeting seems like more than a reasonable amount of time for the Spartina planting plan.

Vice-Chairman Wood stated it is not a problem as long as the information comes back to the Board. He stated the Board was "stepped on" when part of the wetlands were removed and turned into a buffer zone. The Board has no problem with an extension to March 25, 2003 for presentation of a planting plan for the Spartina.

#### Update to the Joint Permit Application

Mr. Ballard stated there have been language changes to the joint permit application, which are reflected in the Board packages, a copy of which is attached hereto and made a part hereof. The language changes do not change how applications are implemented or reviewed, but the basic language covers the Chesapeake Bay Act and gives official consideration of the buffer in the permit; we have that covered already with our condition calling for restoration of the buffer, but wanted to make sure the Board was aware that we now have an up to date copy of the joint permit.

### Wetlands Symposium

Mr. Ballard stated that the Annual Wetlands Symposium will be held on Thursday, March 20, 2003, from 12:30 – 4:00 p.m. in McHugh Auditorium at the Virginia Institute of Marine Science. The registration deadline is March 14<sup>th</sup> and there is no fee involved.

Vice-Chairman Wood stated he and Board Member Cozzens would be attending, but Board Member Morris has a class to attend that day.

Mr. Ballard stated he would contact Chairman Snider and Board Member Bellamy concerning the symposium.

### Civil Charge Matrix

Mr. Ballard stated he has researched enforcement documents from other localities and will be proposing an enforcement policy guideline for our Board that will follow the Code but will give us a step-by-step guide on how to pursue enforcement that everyone is in agreement with, including the City Attorney's Office, Codes Compliance, the Wetlands Board, staff, etc. The City of Norfolk has a very good guide and the basis for their matrix came from the Virginia Marine Resource Commission that allows greater flexibility to pursue civil charges within a range of compliance. It seems to be a very rational way of guiding enforcement and the intent is to have everyone comfortable with it so when a violation comes up we can expedite the process by having a formal policy in hand that will give us some "teeth." We already have in our Code the ability to levee civil charges but we need binding guidance to go by in order to be more comfortable in pursuing those kinds of actions. He stated there are no public hearings scheduled for the next meeting, and he proposes to talk about the proposed enforcement document in greater detail prior to that meeting. He will have a draft document prepared for discussion by the Board. The violations discussed tonight have shown that we need to have a policy in place so there will be no questions; there should be a step-by-step guide available that everyone will have agreed to follow.

In response to Vice-Chairman Wood questioning whether there should first be a work session with Mr. Ballard and the Board to discuss past experiences prior to that afternoon's meeting, Mr. Ballard stated there is no obligation to pursue the document; it is only a first step and having a document in hand to review will hopefully make it easier to respond and discuss. The document is fairly straightforward; Norfolk has a very well written document that follows our practice of first pursuing voluntary compliance.

In response to a question by Vice-Chairman Wood, Mr. Ballard stated that an hour would be a suitable amount of time.

Vice-Chairman Wood stated that a 4:00 p.m. work session prior to the next meeting is agreeable to the Board members present.

#### **ITEM VI. MATTERS BY THE BOARD MEMBERS.**

There were no additional matters presented by the Board.

#### **ITEM VII. MATTERS BY THE PUBLIC.**

Mr. Gene Cone, 1341 Coral Place, stated that he and Vice-Chairman Wood were on a committee in 1994 relating to dredging Hampton's tributaries, yet nothing has been done. He stated he has begged the Wetlands Board to visit his property; the wetlands vegetation is now going away, his lawn is going away, and it is a mudflat. The violator—the City—is the worst offender of the wetlands. The mud is on his grass and is killing the vegetation, but nothing is being done to correct the problem. He questioned whom he has to see to get the City of Hampton doing something to help him, and he would like a response by the next Board meeting. He received a \$10,000 increase in his property value, and thus an increase in taxes, but there is nothing but mudflat in his yard; you cannot even get a canoe up the tributary.

Vice-Chairman Wood stated he does not think this is the proper place to solve the problem, as has been explained before. He agrees the issue is falling on deaf ears here because this is not the place to solve that particular problem. The Hampton Roads dredging project is not a dead horse but he does not believe that is going to answer the question.

Mr. Cone requested that since the staff and Board represent the City, they can find out who has responsibility for all of the neglect (to the tributaries by not dredging).

Vice-Chairman Wood stated he does not personally know how to address Mr. Cone's issue, yet the problem has been ongoing for some time.

Mr. Goetz stated he does not know the particulars of the problem, and he does not know what the City has not done, but the City of Hampton has ordered an assessment of various dredging projects. He stated that dredging is a very costly venture and to some it may not be a beneficial cost because it may not affect all residents. Any effort of the magnitude of a dredging project would have to be City Council's decision, and to proceed we would have to obtain Federal permits.

Vice-Chairman Wood stated the conversation is getting out of this Board's jurisdiction, but the issue has been ongoing since that committee was disbanded. It is more of a City Council issue, but there is at least one situation where the build up of sludge is filling up that portion of the river and it is filling up quickly.



In response to Mr. Goetz suggesting that Mr. Cone schedule a meeting with Fred Whitley, the City Engineer, to discuss his concerns, Mr. Cone requested staff find out exactly who he needs to talk to and let him know at the next meeting.

**ITEM VIII. ADJOURNMENT.**

There being no additional business, a motion was made by Board Member Morris, seconded by Board Member Cozzens, and agreed to by all members present, that the meeting be adjourned. The meeting was adjourned at 5:55 p.m.

Respectfully submitted,

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Edward J Haughton, City Planner  
Secretary to the Board

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Brian P. Ballard, City Planner  
Incoming Secretary to the Board

APPROVED BY:

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William L. Wood, Vice-Chairman  
Hampton Wetlands Board